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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 671

CENTRAL-STATES CORPORATION, *Petitioner*

v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CENTRAL-STATES CORPORATION, an Illinois corporation, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit entered on October 6, 1956.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 237 F.(2d) 875, and is set forth in full in Appendix B to this petition, *infra*, p. 8a. That opinion affirmed a summary judgment entered, without opinion, by the District Court, which judgment is contained in the certified Transcript of Record filed with this petition.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit affirming the judgment of the United States District Court for the District of Kansas was dated and entered on October 6, 1956. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether the surety on a statutory warehouseman's bond is liable to a holder and purchaser in good faith of negotiable warehouse receipts printed by the authorized state officials in the prescribed statutory form but issued for non-existent goods.

2. Whether in a state which has enacted the Uniform Warehouse Receipts Act that legislation may be treated as a mere offshoot of the local law or entirely disregarded.

3. Whether in the absence of a pertinent decision by the courts of the state in which the controversy arises, a Court of Appeals, in construing the local statutes applicable to negotiable warehouse receipts and, in particular, the Uniform Warehouse Receipts Act, may properly decide the question presented in a manner in conflict with all pertinent decisions on the subject by the courts of other states.

STATUTES INVOLVED

The pertinent statutory provisions of the General Statutes of Kansas, 1949 (hereinafter sometimes referred to as "G.S., 1949"), are Sections 34-223, 34-229, 34-238, 34-239, 34-240, 34-244, 34-246, 34-248, 34-250, 34-290, 34-291, 82-120, 82-157 and 82-158. These have been printed in Appendix A to this petition, *infra*, p. 1a *et seq.*

STATEMENT OF THE CASE

This is an action in the nature of an interpleader brought by the respondent, TRINITY UNIVERSAL INSURANCE COMPANY, under Sections 1335, 1397 and 2361 of Title 28 of the United States Code, against a number of creditors of GARDEN GRAIN & SEED COMPANY, INC., including the petitioner, CENTRAL-STATES CORPORATION. The purpose of this suit is to obtain a determination of the liability of the respondent under a certain bond executed by it covering the faithful performance of the duties of the said GARDEN GRAIN & SEED COMPANY, INC., as a public warehouseman licensed under the provisions of Chapter 34 of the General Statutes of Kansas, 1949. The petition to this Court is for a writ of certiorari to review the judgment of the Court of Appeals affirming an order of the United States District Court for the District of Kansas allowing a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in favor of the respondent and against the petitioner.

The petitioner is engaged in the business of distilling spiritous liquors and for that purpose purchases large quantities of milo and other grains. Prior to the transactions here in question the petitioner purchased substantial quantities of milo from GARDEN GRAIN & SEED COMPANY, INC. In each instance the petitioner paid in full for the amount of the purchase and received from GARDEN GRAIN & SEED COMPANY, INC., an invoice for the grain sold and negotiable uniform unregistered bailment local public warehouse receipts, evidencing the said grain (R. 27, 46, 51-57). The following receipt is typical of those delivered to the petitioner differing from some of the others only with respect to date and amount (R. 27):

"GARDEN GRAIN & SEED COMPANY ELEVATOR

Pierceville, Kansas

ORIGINAL NEGOTIABLE No. 136

Date	Grade or Test	Net Weight
11-14-51	2 yel. milo	280,000
	Bushels 5,000	
Milo	2	54
Kind of Grain	Grade (Agreed Grade)	Test

LICENSED AND BONDED UNDER THE KANSAS WAREHOUSE LAWS

LOCAL PUBLIC WAREHOUSE RECEIPT

Received in store on 11-14-51 from Central States Corporation of Omaha Nebraska.

Five thousand & no/100.....

Bushels of Milo subject to the order of Central States Corp. and the surrender of this receipt and the payment of all charges.

The undersigned warehouseman is not the owner of the grain covered by this receipt, either solely, jointly or in common with others. It is hereby agreed that the grain herein described has been graded as provided by law and may be stored with other grain of the same grade. This grain is fully covered by fire, lightning, tornado and internal explosion insurance. The storage insurance, elevation and other charges on said grain is to be according to our advertised tariffs, from date of receipt of grain in store, until sold or delivered to the above-named depositor or his order.

Uniform Unregistered Bailment Local Public Warehouse Receipt"

In each instance GARDEN GRAIN & SEED COMPANY, INC., used the monies paid by the petitioner to purchase milo. In each instance the milo so purchased was deposited in the warehouses of GARDEN GRAIN & SEED COMPANY, INC. In each instance the said deposit was purported to be made for and on behalf of CENTRAL-STATES CORPORATION. In each instance the warehouse receipts issued to the petitioner recited that the grain so deposited had been "Received in store . . . from Central States Corporation". As the petitioner re-

quired grain for its distilling operations, it would draw upon the deposits of milo evidenced by these receipts and would surrender a sufficient number of them to cover the grain withdrawn. *Storage charges were paid by the petitioner on all grain not withdrawn by it* (R. 46). There is no question that the petitioner believed that milo had been deposited for and on its behalf by GARDEN GRAIN & SEED COMPANY, INC., and that the petitioner at all times in its transactions with GARDEN GRAIN & SEED COMPANY, INC., acted in good faith and without knowledge of any dereliction on the part of GARDEN GRAIN & SEED COMPANY, INC. (R. 46).

On January 16, 1952, GARDEN GRAIN & SEED COMPANY, INC., was adjudicated a bankrupt (R. 34). At that time it was learned that it did not have sufficient grain on hand to cover all of the receipts issued by it (R. 35). The receipts here in question were acquired by the petitioner from GARDEN GRAIN & SEED COMPANY, INC., on November 14, 1951, November 29, 1951, and December 15, 1951, and evidenced respectively 5,600,000 pounds, 2,800,000 pounds, and 2,800,000 pounds of milo for which the appellant paid respectively $127,680.00, $65,800.00, and $68,800.00 (R. 22-23).[1]

All of the warehouse receipts issued to the petitioner were on official forms prescribed and printed by the state of Kansas (R. 60). Each of the said receipts, bearing the caption, "Uniform Unregistered Bailment Local Public Warehouse Receipt," was issued with the

[1] The Court of Appeals, in its opinion, inadvertently omitted a specific reference to the Nov. 14, 1951 acquisition but obviously considered that acquisition (as evidenced by the Court's reference to petitioner's allegation that the amount paid to the warehouseman, after credit for milo received by petitioner, is $220,875.71).

express authority of the chief grain inspector for the state of Kansas, who was then Mr. A. P. Emrie (R. 61). Each of the said warehouse receipts was prepared in triplicate. The original was issued to the petitioner, one copy was retained by GARDEN GRAIN & SEED COMPANY, INC., and the second copy was delivered to the chief grain inspector for the state of Kansas (R. 60). GARDEN GRAIN & SEED COMPANY, INC., was not authorized to issue *registered* receipts (R. 61). See G. S., 1949, Sec. 34-240. It is not the practice in the state of Kansas to issue depositors' receipts at the time the grain is delivered to the warehouseman. Such receipts are issued some time subsequent to such delivery (R. 59).

The respondent is the surety under a statutory public warehouseman's bond in the principal sum of $130,000.00 issued under G. S., 1949, Sec. 34-229, "for the benefit of all persons interested, or their legal representatives, attorneys, or assigns . . ." (R. 7-18). This section provides as follows:

> "Warehouseman bond. Every applicant for a public warehouse license shall promptly, upon notification by said chief inspector of the amount of bond required, file with said chief inspector his bond with good corporate surety qualified under the laws of the state of Kansas in such sum, not less than $5,000 nor more [than] $50,000, for the penal sum of no less than 10¢ per bushel upon the capacity of the warehouse, except as hereinafter provided, as shall be designated by said chief inspector, said bond to be in favor of the state of Kansas for the benefit of all persons interested, or to their legal representatives, attorneys, or assigns, conditioned for the faithful performance of all his duties as such public warehouseman. In case any person shall make application for

licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of such bond shall be the total amounts which would be required for the several applications if separate bonds were given, except when such amount would be in excess of $100,000, then said chief inspector may stipulate the amount of bond required above $100,000; *Provided*, That whenever said chief inspector shall determine that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of such bonds then it shall be the duty of said chief inspector to require such additional bond or bonds as he shall deem necessary to provide adequate security; and in any case where said chief inspector shall deem the surety upon any warehouseman and his bond to be of impaired financial condition, it shall be his duty to require a substituted or additional bond as he shall deem necessary."

The said bond was in effect at the time of the transactions between the petitioner and GARDEN GRAIN & SEED COMPANY, INC.

The instant case involves the sixth appeal arising directly or indirectly out of the bankruptcy of GARDEN GRAIN & SEED COMPANY, INC. See *Central-States Corp.* v. *Luther*, 215 F. (2d) 38 (C.A. 10, 1954), cert. den. 348 U.S. 951, 99 L. Ed. 743, 75 S. Ct. 438; *Inter-State National Bank of Kansas City* v. *Luther*, 221 F. (2d) 382 (C.A. 10, 1955), cert. granted, 350 U.S. 810, 100 L. Ed. 51, 76 S. Ct. 77, dismissed, 350 U.S. 944, 100 L. Ed. 188, 76 S. Ct. 297; *First National Bank in Wichita* v. *Luther*, 217 F. (2d) 262 (C.A. 10, 1954); *United States* v. *Luther*, 225 F. 2d 499 (C.A. 10, 1955), cert. den. 350 U.S. 497, 100 L. Ed. 200, 76 S. Ct. 321; *Luther*

v. *United States,* 225 F. (2d) 495 (C.A. 10, 1955), cert. den. 350 U.S. 497, 100 L. Ed. 220, 76 S. Ct. 321; *Fidelity State Bank* v. *Central Surety & Ins. Corp.,* 228 F. (2d) 654 (C.A. 10, 1955). The first two of these decisions were decided by a divided court, the first by a 2 to 1 vote, the second by a 3 to 2 vote. In the first case certiorari was denied but in the second, which raised much the same point, certiorari was granted. No hearing, however, was ever held before this Honorable Court because the issues in controversy were promptly settled after the issuance of the writ.

In the instant cause the Court of Appeals for the Tenth Circuit has denied the right of the petitioner to recover on its warehouse receipts for reasons which represent an extension of the rationale employed in the earlier cases cited above. In arriving at its conclusion herein, the Court of Appeals made certain findings of fact which have no foundation whatsoever in the record and which are completely at variance with its own previous findings in *Central-States Corp.* v. *Luther, supra.* This is a subject which is more fully treated in Part II of the reasons for granting the writ set forth below.

REASONS FOR GRANTING WRIT

I

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF STATE LAW IN A WAY IN CONFLICT WITH APPLICABLE STATE LAW AND WITH THE DECISIONS OF THIS COURT.

A. The Court of Appeals Has Disregarded the Uniform Warehouse Receipts Act (G.S., 1949, Secs. 82-101 to 82-160) and the Pertinent Decisions Thereunder

In *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust,* 239 U.S. 520, 60

L. Ed. 417, 36 S. Ct. 194 (1916), this Honorable Court said:

> "It is apparent that if these uniform acts are construed in the several states adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity, and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the uniform warehouse receipts act expressly provides (§ 57): 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficent object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an offshoot of local law. *The cardinal principle of the act—which has been adopted in many states—is to give effect, within the limits stated, to the mercantile view of documents of title . . .*" (Italics supplied).

In the instant cause the Court of Appeals has ignored the quoted admonition. It has not only based its decision upon a hypertechnical construction of local law, but it has completely disregarded the Uniform Warehouse Receipts Act, which has been adopted by Kansas and is found in G. S., 1949, Sections 82-101 to 82-160.[2] Nowhere in the decision of the Court of Appeals is any mention of the Act to be found. This action by the Court of Appeals clearly subverts the intent of the Kansas legislature in enacting the Uni-

[2] Section 57 of the Act, quoted in the aforementioned case, is G. S., 1949, Sec. 82-157.

form Warehouse Receipts Act. What was said in *Sampsell* v. *Lawrence Warehouse Co.*, 167 F. (2d) 885 (C.A. 9, 1948), in passing upon a question arising under that Act in California, applies here with equal force:

> "It is apparent that the intent of the California legislature in providing that the act is to be interpreted to make uniform the law of the states which enacted it, is defeated if in California this warehouse receipt be held invalid."

The pertinent portion of the Act is Section 20, to which G. S., 1949, Section 82-120, corresponds. It reads, in part, as follows:

> "A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue."

As noted below three states have construed Section 20 as authorizing recovery by a holder of negotiable warehouse receipts against the warehouseman's surety because of the issuance of negotiable receipts for nonexistent goods. No decision on the point has ever been rendered by the courts of the State of Kansas.

In *Goodwyn* v. *Union Springs Guano Co.*, 228 Ala. 173, 153 So. 246 (1934), the Supreme Court of Alabama said:

> "Under the facts in this case this statute [sec. 20 of the Uniform Warehouse Receipts Act] precludes the warehouseman, Graham, from asserting as a defense the nonexistence of the cotton. As before stated, some of the receipts were issued by him to third persons, and all were delivered by Graham to the plaintiff as representing cotton

covered by the mortgages held by plaintiff against Graham and his tenants; and in the absence of evidence going to show that through the connivance and collusion of Graham and the plaintiff, with the fraudulent intent to mulct the surety, the surety standing in the shoes of the principal is in no better position than the principal, and cannot assert the defense of the nonexistence of the cotton."

Similarly in *Maryland Casualty Co.* v. *Washington Loan & Banking Co.*, 167 Ga. 354, 145 S.E. 761 (1928), the Supreme Court of Georgia held:

"... There was no evidence tending to show that the bank knew of such irregularity, and no circumstances were proven which would put the bank on inquiry as to the actual storage of the cotton in the warehouse of the company.

* * * *

" . ... Where warehouse receipts are issued in due course of business for the express purpose of being pledged as security to obtain money, and if the warehouseman in such receipts recites that it owns and has in storage the cotton for which the receipts are issued, the bank, as pledgee of the receipts, after having advanced money in good faith on them, is entitled to stand on the terms of the pledged receipts as importing a genuine business transaction of the nature described in the receipts.

* * * *

"An obligation rests upon a warehouse company not to issue receipts for goods in which it recites that it owns such goods, and that it will deliver the same to the holder of such receipts, when in fact such goods are not in existence or are not stored with it. *The purpose of the bond is to protect persons dealing with the warehouseman, in the usual and customary method of business, and against fraudulent and unlawful acts*

of the warehouseman in issuing receipts for goods in which it recites their storage, when the recital is false. For a breach of this obligation the surety upon its bond becomes liable to the pledgee of the receipts for the falsity of such statement." (Italics supplied)

And similarly in *Vallee* v. *Imex Warehouse Co.*, 9 La. App. 703, 118 So. 900 (1928), the Appellate Court of Louisiana ruled as follows:

"The burden was on the surety company, which had guaranteed the faithful performance by the warehouse company of the contract, to prove lawful excuse (see section 8 paragraph [c]) for failure to deliver, and before it could make such proof it was necessary to allege it. As issuance of receipt by a warehouseman knowing that the goods have not been received by him is made a crime by section 50 of the act, the failure to deliver for that reason is not a lawful excuse, unless allegation is made and proved that the holder was a **party to the fraud.**

* * * *

"To permit the surety company to attack the validity of the principal's contract of bailment without any allegation of guilty knowledge necessarily implying bad faith on the part of plaintiff would largely destroy the usefulness of the Negotiable Warehouse Receipt, and would necessarily clog the wheels of commerce to which this symbol of credit daily becomes more and more essential." (Italics supplied)

This last decision is especially significant because *the receipts there considered contained a recital, as do the receipts in the instant cause, that certain goods had been received in store from the plaintiff who, in fact, had made no physical deposit.* The Court of

Appeals was of the opinion that the warehouse receipts here in question could be valid only if the holder thereof had itself made a physical deposit of grain in a warehouse. Since at least the 1890's, however, the requirement of a physical deposit has been discarded by most courts as obsolete and unrealistic. See *National Exchange Bank of Hartford* v. *Wilder*, 34 Minn. 149, 24 N.W. 699 (1885).

But what is even more significant in the instant cause is that Section 20 of the Act (G.S., 1949, Sec. 82-120), grants the right to recover not to a *depositor* of grain but to the *holder* of a negotiable warehouse receipt, and "holder" is defined in Section 58 (G.S., 1949, Sec. 82-158) not as a holder in due course but merely as "a person who has both actual possession of such receipt and a right of property therein." This fact obviates the necessity for considering whether or not the petitioner was or was not a depositor of grain. As will be seen in Part I.B., below, the same is true under the local grain warehouseman's act (G.S., 1949, Secs. 34-223, 34-250) regardless of section 20 of the Uniform Warehouse Receipts Act.

The policy underlying the decision of this court in *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust Co., supra,* and in the other cases cited above has been enunciated in the following additional decisions:

> "A primary purpose of the Uniform Warehouse Receipts Act is to make the standard receipts issued by warehousemen for chattels documents of title so that people who honestly purchase these documents for value will be protected by the terms of the Act as purchasers in good faith." *Weil Bros., Inc.* v. *Keenan,* 180 Miss. 697, 178 So. 90 (1938).

"Indeed, the general scheme of the Warehouse Receipts Act to achieve uniformity, and to effect the secure and ready use of warehouse receipts as instruments of credit, is inconsistent with the notion that the business world must look to something other than the observance of the definite and comprehensive terms of the act itself." *Heffron v. Bank of America,* 113 F.(2d) 239 (C.A. 9, 1940). Quoted in *Sampsell* v. *Lawrence Warehouse Co., supra.*

"The plaintiff had the right to presume that the law had been complied with and when the plaintiff brought the uncanceled receipts in good faith, it had not, under the allegations of the petition, failed to exercise due care." *Peoples Warehouse Co.* v. *Commercial Bank and Trust Co.,* 74 Ga. App. 67, 38 S.E. (2d) 855 (1946).

"The rule in North Dakota is that 'nothing but clear evidence of knowledge or the notice of fraud or mala fides can impeach the prima facie title of a holder of a negotiable paper taken before maturity' . . . . None of the irregularities on the face of the receipt indicate as a matter of law any difficulty in Hauser's title, any fraud in the inception of the receipt, or that there existed any defense to its enforcement." *F. H. Peavey & Co.* v. *First National Bank,* 140 F.(2d) 815 (C.A. 8, 1944).

Neither Section 20 (G.S., 1949, Sec. 82-120) nor any of the decisions cited above are even mentioned in the opinion of the Court of Appeals. That opinion is predicated entirely upon the fact that each of the warehouse receipts here in question recited that certain quantities of grain were "received in store" from the petitioner and that the petitioner did not itself physically deposit grain. The following uncontradicted facts are established by the record:

1. The petitioner paid full value for all of the warehouse receipts held by it (R. 22-24).

2. The warehouseman used the moneys paid by the petitioner to purchase milo (R. 46).

3. The milo so purchased was deposited in the warehouses of the warehouseman (R. 46).

4. The deposit in each case was made for and on behalf of the petitioner (R. 46).

5. Storage charges were paid by the petitioner on all grain representing the said warehouse receipts (R. 46).

6. All of the warehouse receipts were on official forms prescribed and printed by the State of Kansas (R. 47).

7. Each of the said receipts bearing the caption, "Uniform Unregistered Bailment Local Public Warehouse Receipts" was issued with the express authority of the chief grain inspector of the state of Kansas (R. 47).

Despite these facts the Court of Appeals held that the petitioner was itself responsible for its loss and that the surety was exonerated from liability on a warehouseman's bond issued "for the benefit of all persons interested" because the warehouseman was guilty of a wrongful act!

B. Regardless of the Uniform Warehouse Receipts Act, the Decision of the Court of Appeals is in Conflict With the Kansas Grain Warehousing Act (G.S., 1949, Chap. 34)

In its prior opinions in *Central-States Corp.* v. *Luther, supra,* and *Fidelity State Bank* v. *Central Surety and Ins. Corp., supra,* the Court of Appeals has

placed the entire emphasis on the obligations imposed by the Kansas Grain Warehousing Act (G.S., 1949, Chap. 34) upon *depositors* of grain. No reference is made by the Court of Appeals, however, to the rights granted by that act to the *holders* of warehouse receipts. G.S., 1949, Section 34-250, provides as follows:

> "A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the grain upon a demand made either by the *holder* of a receipt for the grain, *or* by the *depositor,* if such demand is accompanied with: (a) An offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the grain is delivered, an acknowledgment that it has been delivered, if such acknowledgment is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the grain in compliance with the demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal." (Italics supplied)

It will be noted from an examination of this language that rights are granted to a holder of a receipt as well as to a depositor of grain. The petitioner certainly falls within the former category. Other provisions of Chapter 34, moreover, indicate that the legislature of Kansas was just as desirous of protecting the interest of a holder as were the authors of the Uniform Warehouse Receipts Act. Thus Section 34-244 provides that:

> "A receipt in which it is stated that the grain received will be delivered to the bearer, or to the order of any person named in such receipt, is a

> negotiable receipt. No provision shall be inserted in a negotiable receipt that will make it non-negotiable. Such provisions, if inserted, shall be void."

The instant receipts comply with all of the requirements of form prescribed by Section 34-239 but, in addition, contain the words previously quoted: "received in store from." This last phrase, according to the Court of Appeals, invalidates all of the receipts because no grain was physically received from the petitioner. However, it is respectfully submitted that this holding runs counter to the language of Section 34-244 quoted above.

Section 34-238 provides, among other things, that:

> "Warehouse receipts may be issued by any licensed public warehouseman as herein defined and must be issued in manner and form as provided by this act, and the form of all receipts shall be approved by the chief inspector of the state grain inspection department. The chief inspector shall be authorized to have printed by the state printer all of the warehouse receipts issued by public warehousemen licensed under this act . . ."

All of the receipts herein issued were on a form prescribed by the chief grain inspector and were all printed by the state printer in pursuance of the authority of the chief inspector. The fact that these receipts had such governmental sanction and approval would seem to warrant every effort being bent toward their validation. The ruling of the Court of Appeals, however, has had a precisely contrary result.

Section 34-248 provides that all receipts shall be registered, but "That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others . . ." All of the receipts here in question were unregistered receipts of the type authorized by the language quoted. The Court of Appeals has held, however, that the receipts in question should have been registered because they were issued for the warehouseman's own grain and not for grain owned by the petitioner. *The uncontradicted evidence, however, is that the grain in question was purchased with money provided by the petitioner for the petitioner's account and for deposit in the petitioner's name in the warehouses of the warehouseman. Furthermore, at no time prior to the warehouseman's bankruptcy did the petitioner know that the grain reresented by the receipts had not in fact been deposited* (*R. 46*).

Section 34-246 provides that "no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued." Section 34-290 provides that a warehouseman who issues a receipt for grain not actually received by him shall be guilty of a crime. Section 34-291 provides that a warehouseman who knowingly issues a receipt containing false statements shall be guilty of a crime. If the purchaser and holder of receipts is bound to know the law, he certainly, it is respectfully submitted, had the right to rely upon these statutory provisions in determining whether or not the receipts acquired by him were valid. All of these provisions were enacted to protect a holder of ware-

house receipts. At any rate they were not enacted to penalize the holder, and yet this is precisely the conclusion reached by the Court of Appeals below.

Section 34-229 prescribes the nature of the bond which every public warehouseman must post prior to commencing business. The bond in question complies with the statutory condition that it be "in favor of the state of Kansas for the benefit of all persons interested" and clearly falls within the purview of the statute. The decision of the Court of Appeals nullifies the statutory intent by completely overlooking the wrongful acts of the warehouseman and by denying recovery to the petitioner as a holder on the ground that it should have known that no grain was deposited to its account. The record, however, is clear that the receipts were purchased by the petitioner in good faith and without any knowledge that the warehouseman had not, in fact, deposited grain in petitioner's name and to its credit. The Court of Appeals' decision, therefore, completely relieves the surety from liability for the warehouseman's fraud perpetrated against a completely innocent party. This clearly undermines the legislature's intent (expressed by enactment of Section 34-229) to give protection to the innocent by provision for a surety for the warehouseman's faithful performance of his duties. In effect, the decision makes that bonding provision largely meaningless. Certainly this is a case of naked error.

II

THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY MAKING FINDINGS OF FACT HAVING NO FOUNDATION IN THE PRESENT RECORD AND AT VARIANCE WITH ITS OWN FINDINGS IN A PRIOR RELATED CASE.

In the opinion below the Court of Appeals stated:

> "The Seed Company [the warehouseman] did not have milo in storage for which it issued receipts to Central [the petitioner] and after it received the money from Central it did not thereafter purchase milo and place it in the warehouse of Central to the credit of Central."

This is an absolutely amazing finding. No evidence was adduced below to support this finding. The only factual matter before the Court is contained in the pleadings filed by the parties. One of these pleadings was an affidavit of defense filed on behalf of the petitioner (R. 45-49). This pleading specifically alleges that the petitioner paid certain moneys to the warehouseman for grain, that these moneys were used to purchase grain, and that the grain so purchased was deposited in the warehouses of the warehouseman to the account of the petitioner (R. 46). No evidence was adduced to deny or controvert this allegation. Nevertheless, the Court of Appeals found that the converse of the allegation was true. This, of course, was not only a clearly erroneous application of the judicial process, but constitutes an even more serious violation of the petitioner's rights when considered in conjunction with the same court's findings in the prior case of *Central-States Corp.* v. *Luther, supra,* in which testimony and evidence were adduced. The issue there was primarily whether or not the present petitioner had traced its moneys into a certain special

fund held by the Trustee in Bankruptcy. The Court of Appeals said (at p. 44):

> "At the time of the first transaction between the claimant and the bankrupt, the bankrupt was insolvent; its liabilities on warehouse receipts and storage tickets issued for milo exceeded the amount of milo which it then had in storage; and it had in its bank account a balance of only $435.13. At the time of the second transaction, the bankrupt was insolvent; was short in its milo account; and the balance in its bank account was only $115.06. And at the time of the third and last transaction between the parties, the bankrupt was still insolvent; was still short in its milo account; and the balance in its bank account was $15,480.42. The three sums which the claimant paid to the bankrupt were promptly deposited in the bank account of the bankrupt and they augmented such account by the respective amounts thereof. And immediately after the making of each deposit, the bankrupt spent large sums of money for milo . . ."

The fact of the matter was that all of the moneys paid to the warehouseman by the petitioner for the warehouse receipts in question was used to purchase milo which was deposited in the warehouses of the warehouseman. That the petitioner believed this to be the case is evidenced by its payment of storage charges for the grain evidenced by the warehouse receipts (R. 46).

The Court of Appeals makes the further unfounded assertion in the opinion below that "the Seed Company issued unregistered receipts to Central for grain which it did not actually have in storage; and Central knew those facts at the time it received the receipts and honored the sight drafts." The affidavit of

defense filed below alleges "that at no time was [the petitioner] aware that milo had not been deposited for and on its behalf by [warehouseman] in the amounts specified in the said warehouse receipts; that in all its transactions with [the warehouseman] [the petitioner] acted in good faith and without knowledge of any dereliction on the part of [the warehouseman]" (R. 46). No evidence to the contrary appears in the record. Moreover, the Court's finding of express knowledge on the part of the petitioner is contradicted by the further finding in the conclusion of the Court's opinion that the petitioner "was bound to know that the unregistered receipts had been issued to it for grain that was not in the warehouse."

Toward the end of its opinion the Court of Appeals quotes as follows from its prior related decision in *Fidelity State Bank* v. *Central Surety and Ins. Corp., supra,* as follows:

> " . . . If transactions like those in this case are upheld, the holders of invalid receipts may make a claim against the bondsman of the warehouseman, and the protection sought to be given those who store grain in warehouses or purchase valid warehouse receipts, could be destroyed. The examining officials could not effectively inspect and balance the amount of grain held by the warehouseman against outstanding warehouse receipts or other evidences of title to grain issued by the warehouseman. It seems to us that the statutory provisions for obtaining a warehouseman's license and governing transactions relating to grain in storage, either as bailee or owner, were designed to prevent such transactions as occurred between the bank and the grain company and any one participating in such transactions is not entitled to the protection of the Act."

When this language was originally written, the Court of Appeals was apparently not informed of the procedure with respect to the issuance of unregistered warehouse receipts in the state of Kansas, but since, in the instant cause, the Court was so informed, its repetition of the language quoted in the light of this information is somewhat shocking. The record in this case discloses that unregistered receipts such as the ones here involved were always prepared in triplicate by the state printer, that the original was issued to the holder and purchaser, that one copy was retained by the warehouseman, and that the second copy was delivered to the chief inspector for the state of Kansas for the purpose of enabling him to check the status of the warehouseman's accounts. The assertion, therefore, that the "examining officials could not effectively inspect and balance the amount of grain" is entirely without foundation.

III

WHETHER NEGOTIABLE WAREHOUSE RECEIPTS ARE SUBJECT TO EXTRANEOUS DEFENSES IS A QUESTION VITAL TO THE CONDUCT OF BUSINESS.

The trend of the law for the past half century at least has been to expand and extend the negotiability and merchantability of various documents of title. This has been true, for example, of bills of lading. *Newhall, et al.* v. *Central Pacific Railway Co.*, 51 Cal. 345 (1876). It has certainly been true of warehouse receipts. See *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust Co., supra.* The reasons are, of course, obvious. Commerce carried on over vast distances and employing rapid means of communication would be severely handicapped, if not completely hamstrung, by the applica-

tion of obsolete rules limiting and circumscribing the negotiability of documents of title. It is estimated that hundreds of millions of dollars of business is conducted each year through the media of bills of lading and warehouse receipts. In the leading case of *Newhall, et al.* v. *Central Pacific Railway Co., supra,* the Supreme Court of California said with respect to bills of lading:

> "If a person, taking an assignment of a bill of lading, is to encounter these risks, and can take the assignment with safety only after he has inquired of the vendor, and of every carrier through whose hands the goods are to come, whether a notice of stoppage in transitu has been given, it is quite certain that prudent persons will cease to advance money on such securities, and a very important class of commercial transactions will be practically abrogated."

Similarly in *Peoples Warehouse Co.* v. *Commercial Bank and Trust Co., supra,* it was held that "the plaintiff had the right to presume that the law had been complied with, and when the plaintiff bought the uncanceled receipts in good faith, it had not, under the allegations of the petition, failed to exercise due care." And again in *Heffron* v. *Bank of America, supra,* the Court of Appeals said:

> "Indeed, the general scheme of the Warehouse Receipts Act to achieve uniformity, and to effect the secure and ready use of warehouse receipts as instruments of credit, is inconsistent with the notion that the business world must look to something other than the observance of the definite and comprehensive terms of the act itself."

To quote again from *Weil Bros., Inc.* v. *Keenan, supra,*

> "A primary purpose of the Uniform Warehouse Receipts Act is to make the standard receipts issued by warehousemen for chattels documents of title so that people who honestly purchase these documents for value will be protected by the terms of the Act as purchasers in good faith."

Indeed, every decision relevant to the question which the petitioner has been able to find has emphasized the rights of the holder of negotiable warehouse receipts as an innocent purchaser and has invariably permitted him to recover either against the warehouseman, the warehouseman's surety, or adverse claimants. The decision below is unique in that it shifts the burden of liability and responsibility from the warehouseman and his surety to the innocent holder of warehouse receipts. Its express ruling is that the petitioner "was bound to know that the unregistered receipts had been issued to it for grain that was not in the warehouse." The fact, however, was that the petitioner did not know that its receipts had been issued for grain that was not in the warehouse. Indeed, grain was purchased with the petitioner's money and deposited in the warehouse. Had the petitioner had any inkling that there was no grain behind the receipts, its officers, as reasonable and rational men, would certainly not have paid more than $260,000.00 for the receipts delivered to them. In short, the Court of Appeals has held, in effect, that punishment for a wrongful act should be inflicted not upon the wrongdoer, but upon the victim. This holding is not only morally wrong, but it conflicts with the overwhelming weight of legal authority and it runs counter to the needs and practices of the business

community. If the decision below becomes the law, no man will be able to rely upon a negotiable warehouse receipt unless he first makes a personal inspection of the warehouse in which the commodity has been allegedly deposited. Such a requirement in our modern business world is not only impractical, but nothing short of fantastic.

CONCLUSION

For the foregoing reasons the petition for certiorari should be granted.

Respectfully submitted,

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